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FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 09L-16
DATE OF REFERRAL: May 16, 2009
DATE OF ACTIVATION: May 26, 2009
PRE-RTB NOTIFICATION
RESPONSE RECEIVED: September 4, 2009

EXPIRATION OF SOL: October 21, 2009 –
December 10, 2013¹

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Fannie Lou Hamer Federal Political Action
Committee and Edwin K. Washington, in his
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 434(a)(4)(A)(i)
2 U.S.C. § 434(a)(4)(A)(iii)
11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. FACTUAL BACKGROUND

This referral from the Reports Analysis Division ("RAD") concerns a pattern of
late reporting between 2004 and 2008 by the Fannie Lou Hamer Federal Political Action

¹ The Committee's 2004 July Quarterly Report was due on July 15, 2004, and subject to the Administrative Fine Program beginning on July 21, 2004. Therefore, the statute of limitations for this particular report expired on July 21, 2009. We are not pursuing any violations for this report. The earliest remaining statute of limitations date that will lapse is on October 21, 2009, covering the 2004 October Quarterly Report.

1 Committee ("the Committee") and Edwin K. Washington², in his official capacity as
2 treasurer ("the Treasurer").³ The Committee ceased filing reports in 2004 after its August
3 10, 2004, submission of the 2004 April Quarterly Report covering January 1 through
4 March 31, 2004. The Committee received Notices of Failure to File (RQ-7s) for all
5 required subsequent reports starting with the 2004 July Quarterly Report through the
6 2006 Year End Report.

7 The Committee did not respond to any of the Notices of Failure to File (RQ-7s)
8 and did not contact RAD until August 7, 2007, almost five months after it had been
9 notified of RAD's intent to administratively terminate the Committee. However, the
10 Committee had several telephone conversations with RAD between September 3, 2008,
11 and April 6, 2009, in an attempt to rectify its previous filing lapses.

12 RAD administratively terminated the Committee's filing requirements on April
13 16, 2007, after the Committee did not provide a written objection to the Commission's
14 intended Administrative Termination Notice dated March 15, 2007. The letter also
15 informed the Committee "however any receipt or disbursement of funds by the
16 committee for the purpose of influencing a Federal election or supporting a federal
17 candidate will void the administrative termination."

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² The Committee states, in its pre-reason to believe response, that Karen Green became its treasurer as of April 2009. However, the Committee has not filed an amended Statement of Organization reflecting the change in treasurers, and Mr. Washington still appears as the Treasurer on the public record. See Attachment 3.

³ The Committee was assessed a civil penalty of \$500 in an Administrative Fine Program matter AF-2062 for failure to timely file the 2008 Year End Report. The committee paid the \$500 civil penalty on July 22, 2009, and the case was closed. Therefore, the 2008 Year End report is not being considered for possible violations or civil penalties in this Report.

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⁴ We note that during its September 3, 2008, phone conversation with the Committee representative, RAD was unaware of the amount of activity at issue, so it instructed the Committee to mail in its reports. It was not until RAD actually reviewed the reports that it realized that the Committee had triggered the threshold for electronic filing with its 2004 October Quarterly report. See 11 C.F.R. § 104.18(a)(1)(i) and (iii). Therefore, the Committee was required to re-file those reports previously submitted on paper, which it did. In this case, however, the fact that the Committee filed paper reports initially is irrelevant to its liability or the amount of the civil penalty.

1 Committee filed a 2008 Year End Report. The filed reports collectively disclose
2 \$418,572.00 in total receipts and \$393,573.94 in total disbursements.

3 Meanwhile, on February 20, 2009, RAD sought a written explanation from the
4 Committee as to why the reports were not timely filed. The Committee responded by
5 facsimile on February 28, 2009, that "delays in filing have been a result of familial
6 and personal setbacks that affected the Treasurer's ability to complete the required
7 training, report composition and subsequent filings in a timely manner."

8 On August 7, 2009, notification was provided to the Respondents in accordance
9 with the Commission's Agency Procedure for Notice to Respondents in Non-Complaint
10 Generated Matters as published on August 4, 2009, in the Federal Register (74 FR
11 38617). The Respondents were provided with the opportunity to submit written factual
12 or legal materials relevant to the matter within 15 days from the date of the letter, and
13 their request for an extension until September 4, 2009, was granted. On September 4,
14 2009, we received a response to the pre-reason to believe notification letter.

15 Yvette McElroy, Field Director, states in the response that the "matter before you
16 concerns an administrative oversight, which has been corrected." Attachment 3. She
17 acknowledges that the Committee's former treasurer did not timely file the reports. The
18 Committee leadership, upon learning the depth of the problem, questioned the former
19 Treasurer and discovered that the reports were not timely filed because of a "series of
20 personal and familial tragedies that resulted in an inability to discharge his duties."⁵ *Id.*
21 According to Ms. McElroy, the Committee retained and commissioned a new tax

1 specialist in December 2008, to bring it into compliance with the Act. *Id.* In addition,
2 the Committee states that, in April 2009, it appointed Karen Green as its new treasurer.
3 *Id.* As previously noted, the Committee has not filed an amended Statement of
4 Organization reflecting the change in treasurers, and Mr. Washington still appears as
5 Treasurer on the public record. The Committee states that "a new set of controls and
6 oversight have been adopted by the Committee's board to insure [sic] that such an
7 administrative lapse does not re-occur." *Id.*

8 As set forth in more detail below, we recommend that the Commission find
9 reason to believe that the Fannie Lou Hamer Federal Political Action Committee and
10 Edwin K. Washington, in his official capacity as treasurer violated 2 U.S.C.
11 §§ 434(a)(4)(A)(i) and (iii) by failing to file timely disclosure reports.

12 **II. LEGAL ANALYSIS**

13 Each treasurer of a political committee shall file reports of receipts and
14 disbursements in accordance with 2 U.S.C. § 434(a). Political committees, other than
15 authorized committees of a candidate, that file quarterly reports shall file them no later
16 than the 15th day after the last day of each calendar quarter; except that the report for the
17 4th quarter ending on December 31st of such calendar year shall be filed no later than
18 January 31st of the following calendar year. 2 U.S.C. § 434(a)(4)(A)(i). In addition,
19 political committees, other than authorized committees of a candidate, shall file a post-
20 general election report no later than the 30th day after the general election and which shall
21 be complete as of the 20th day after such general election. 2 U.S.C. § 434(a)(4)(A)(iii).
22 As set forth above, the Committee failed to file timely reports ranging from its 2004

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1 October Quarterly to its 2008 Year End Report. These reports were late for periods
2 ranging from fourteen months to four years.

3 Based upon the foregoing, we recommend that the Commission find reason to
4 believe that Fannie Lou Hamer Federal Action Committee and Edwin K. Washington, in
5 his official capacity as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) and (iii) by failing to
6 file reports.

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IV. RECOMMENDATIONS

1. Open a matter under review;
2. Find reason to believe that Fannie Lou Hamer Federal Political Action Committee and Edwin K. Washington, in his official capacity as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i), and (iii);
3. Approve the attached Factual and Legal Analysis;
4. Enter into conciliation with Fannie Lou Hamer Federal Political Action Committee and Edwin K. Washington, in his official capacity as treasurer, prior to a finding of probable cause to believe;
5. Approve the attached Conciliation Agreement; and
6. Approve the appropriate letter.

10/1/2009
Date

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